



Planning Commission Date: August 25, 2004

Item No.

## MILPITAS PLANNING COMMISSION AGENDA REPORT

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Category: Public Hearing

Report prepared by: Staci Pereira

Public Hearing: Yes:   X   No:       

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**TITLE:** **SIX-MONTH REVIEW (PR2004-7) OF USE PERMIT  
AMENDMENT NO. P-UA2003-4**

**Proposal:** A six-month review of Use Permit Amendment No. UA2003-4 for the addition of live entertainment, full alcohol sales and extended hours of operation to an existing restaurant (Royal City) located at 90 South Abel Street (APN: 022-24-045), zoned MXD-TOD - Mixed Use with Transit Oriented Development overlay.

**Location:** 90-94 South Abel Street (APN 22-24-045)

**RECOMMENDATION:** **Note receipt and file.**

**Applicant:** Young Thai, Royal City Restaurant, 90 South Abel Street, Milpitas, CA 95035

**Property Owner:** Albert Witt, Jr., P.O. Box 2362, Menlo Park, CA 94025

**Lessor:** Robert Yen, 670 Los Pinos Avenue, Milpitas, CA 95035

**Action(s):** Minor Tentative Map, "S" Zone approval and amendments, use permit approvals and amendments

**Environmental Info:** Exempt

**General Plan Designation:** Mixed Use

**Present Zoning:** Mixed Use with Transit-Oriented-Development Overlay, "MXD-TOD" District

**Existing Land Use:** Retail shopping center

**Agenda Sent To:** Applicant, property owner and lessor (all noted above)

**Attachments:** Parking study

**PJ No.** 2316

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### BACKGROUND

In December 1983, the Planning Commission approved an "S" Zone approval for a commercial shopping center located at 52-118 South Abel Street. Subsequent approvals included "S" Zone

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amendments for landscaping modifications, signage, equipment enclosures, and parking lot re-striping. The shopping center's tenants have been subject to citations and revocation hearings regarding illegal signs. Planning staff and Code Enforcement having been working together to ensure compliance with the City's sign ordinance. A citation has also been issued to the property owner for zoning code violations including missing landscaping and a non-permitted chain link fence in-lieu of a required masonry wall. These violations have not yet been addressed.

On February 14, 1990, the Planning Commission approved Use Permit No. 1023 for a restaurant at 90 S. Abel Street with 108 seats and beer and wine sales. An amendment to the use permit occurred on April 10, 1991, which allowed for an increase in seating to 177 as a result of an expansion to the adjacent tenant space (94 S. Abel Street) and subject to obtaining the landlord's authorization to use 14 of the excess spaces on-site. On July 22, 1992, the Planning Commission approved another amendment to Use Permit No. 1023 that allowed for an increase in seating to 219, subject to the applicant obtaining access to 14 parking spaces on the KFC restaurant parking lot, immediately east of the subject site. The agreement and accessway that made the parking spaces accessible to the subject tenant have ceased and the restaurant is again limited to 177 seats.

On August 27, 2003, the Planning Commission approved Use Permit Amendment (UA2003-4) for the addition of live entertainment, extension hours of operation on weekends and permission of full alcoholic sales to the existing Royal City Restaurant. This approval included a condition for a six-month review to verify compliance with approved special conditions.

### **Site Description**

The project site is located at 52-118 South Able Street and zoned Mixed Use ("MXD"). The site is bounded on the north by Carlo Street and Calaveras Blvd., on the east by South Main Street and Serra Way to the south. Surrounding development is zoned Mixed Use and General Commercial and includes retail shopping centers, commercial centers, restaurants, and professional and dental offices.

The subject tenant space is located in the southeast corner of the L-shaped building. Other tenants within the shopping center include three restaurants, a market, video store and other retail-type stores.

### **ANALYSIS**

As required by Use Permit Amendment No. UA2003-4's condition No. 8, within six (6) months after the live entertainment begins (i.e. upon certificate of occupancy issuance), a public hearing and review by the Planning Commission shall occur to assess any concerns related to noise, security, safety, and parking issues.

### **Parking**

In conformance with the conditions of approval the applicant has performed a 7-day parking study that included days when live entertainment occurred. The study revealed the parking peaked on Friday night between the hours of 10:00 PM and 12:30 PM, with the highest number of vehicles recorded being 105. With 197 parking spaces on-site and a parking peak of 105

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vehicles results in an occupancy rate of 53%. The availability of spaces at this time is due to the majority of the retail and restaurant establishments in Abel Plaza close prior to or at 10:00 PM. Therefore, staff concludes that adequate parking remains available on site to accommodate the live entertainment use on Friday and Saturday nights and no further review is necessary.

### **Safety and Security**

To address any safety and security issues that could arise as a result of late night operating hours with live entertainment, the applicant has submitted verification that private security was provided on Friday and Saturday nights from 7:00 PM to 1:00AM as required by the conditions of approval. The Milpitas Police Department has verified the private security on a site visit. In addition, the City has not received any noise or disturbance complaints as a result of the ancillary use and late night hours. Therefore, staff concludes that the private security currently being provided is adequate and no additional security measures are recommended at this time.

### **Occupancy and Use**

The Milpitas Police Department conducted a site visit on Saturday, August 8<sup>th</sup> at approximately 10:30 PM. They observed a private party of 263 occupants with a live band and, as previously mentioned, two private security officers. The private event consisted of dinner and then live music and dancing ensued. When the Police Officers checked the kitchen it was closed, which is not consistent with the conditions of approval that requires the kitchen to remain open at all times during live entertainment in order to prevent being classified as a nightclub. However, as explained by the applicant, during a private party (similar to a wedding reception that the restaurant often hosts) the restaurant is closed to the public, the food is served first and then the entertainment along with beverage and liquor service is provided. This type of function is consistent with the summary of sales receipts submitted by the applicant which show the beverage sales exceed the food sales for events with live entertainment. With the exception of the closed kitchen, the restaurant with live entertainment did not violate the conditions of approval.

Clarification is needed of the live entertainment in conjunction with the food service to ensure conformance with the conditions. Live entertainment (including dancing) may only occur at the restaurant in conjunction with food service during dining hours. The only instance when the kitchen does not have to be operating at all hours is in the event of a private party. In the case of a private party, food service must be part of the event, but is not required to stay open the throughout the entire event. In addition, during private parties the establishment may not be open to the public and at no time shall the building occupancy exceed 299 persons.

Staff concludes that with this clarification and no known noise or disturbance complaints as a result of the ancillary use, that no further review of the use permit is necessary.

### **RECOMMENDATION**

Close the public hearing. Note receipt and file.

## Parking Study

90-94 S. Abel

**Procedure:** For one (1) week for seven (7) consecutive days, a count of all the vehicles parked in parking spaces (197 shown on site plan) will need to be recorded every (30) minutes in the matrix below. Starting at 10:30 AM and extending to close, 9 PM Sunday-Thursdays and 1 AM on Friday and Saturday, excluding hours of 2:30 to 5:30 when closed.

DATE	TIME																
	10:30	11:00	11:30	12:00	12:30	1:00	1:30	2:00	2:30	5:30	6:00	6:30	7:00	7:30	8:00	8:30	9:00
Monday	15	23	32	47	46	41	36	34	29	16	18	38	70	71	69	65	50
Tuesday	11	18	26	38	50	31	27	25	20	22	19	34	35	29	30	30	26
Wednesday	35	32	40	50	60	42	36	34	18	13	14	18	20	28	19	19	12
Thursday	13	24	52	65	60	40	37	46	20	15	20	22	34	35	37	32	28
Friday	25	35	38	50	51	57	43	41	31	27	20	22	26	47	52	49	68
Saturday	8	16	26	37	51	55	32	31	28	27	25	30	49	53	54	53	51
Sunday	23	22	40	58	67	71	69	52	46	20	25	32	40	62	58	57	42

## 90-94 S. Abel

DATE	TIME															
	9:30	10:00	10:30	11:00	11:30	12:00	12:30	1:00								
Monday																
Tuesday																
Wednesday																
Thursday																
Friday	83	101	105	100	97	94	81	10								
Saturday	48	32	33	22	18	10	8	3								
Sunday																